SUBJECT: Direct Sales Provision

FROM: Barbara Betsock
Deputy Chief Counsel

TO: William Gute
Assistant Director for Operations and Enforcement

As you requested, we have examined the question of what constitutes a direct sales customer for the purpose of determining what is included in intrastate pipeline transportation subject to State jurisdiction under the Natural Gas Pipeline Safety Act. Our analysis, which is attached, is intended to be applied on a case-by-case basis depending on the particular facts in a given situation. If you have any questions or need further assistance, please contact this office.

Attachment

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Direct Sales Provision

The question has arisen as to what is included in the definition of "intrastate pipeline transportation" in the Natural Gas Pipeline Safety Act of 1968 (NGPSA). "Intrastate pipeline transportation" is defined as:

> pipeline facilities and transportation of gas within a State which are not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, except that it shall include pipeline facilities within a State which transport gas from an interstate gas pipeline to a direct sales customer within such State purchasing gas for its own consumption.

The definition was amended in 1976, in response to a 1972 U.S. Supreme Court decision, to avoid inadvertent shift of safety regulator responsibility from a State to OPS. Federal Power Commission v. Louisiana Power & Light Company, 406 U.S. 621 (1972). In that decision, the Court held that facilities transporting gas within a State to a direct sales customer in that State (direct sales provision) are subject to the transportation (as opposed to the rate-setting) jurisdiction of the FPC, now the Federal Energy Regulatory Commission (FERC), under the Natural Gas Act (NGA).

The legislative history of the 1976 amendment to the NGPSA is sparse, but the Senate Report indicates that "(m) ant States had regulated direct sales lines prior to the Supreme Court's decision, and this amendment would clarify that they may continue to do so without Federal preemption under the Natural Gas Pipeline Safety Act." S. Rep. No. 94-852 (94th Cong., 2d sess. at 6).

It should be noted at the outset that jurisdiction under the NGA differs from jurisdiction under the NGPSA. The NGA regulates only the transportation of natural gas in interstate commerce, whereas the NGPSA regulates both interstate and intrastate pipeline transportation. Both interstate and intrastate pipeline transportation are subject to the standards set under the NGPSA; the only difference is whether the regulatory authority is the Federal Government or a State.

Neither the NGA not the NGPSA defines "direct sales customer" or "direct sales lines," but the Court in FPC v. LPL clearly indicated that the 'direct sales' customers referred to were those purchasing gas for their own consumption as opposed to "'reseal' customers, purchasing gas for distribution to ultimate consumers." 406 U.S. 621, 623. The court variously contrasted direct sales and sales for resale id. at 631; direct sales customers and resale customers, id. at 632; and direct industrial sales customers and ultimate consumers, including schools, hospitals, and homes, id.

OPS has not defined the term "direct sales customer." It would appear reasonable for OPS to interpret the term as having the generally understood meaning of an end user or consumer who receives gas directly from an interstate pipeline company, rather than from a distribution company. This allows recognition of the function of the line as essentially distribution, even though the line is part of an interstate transmission line subject to FERC jurisdiction.

An additional issue concerns the point at which a pipeline facility ceases to be an "interstate transmission facility" and becomes "intrastate pipeline transportation" under the NGPSA. The plain language of the statute states that a pipeline facility must: (1) be within a State, (2) transport gas from an interstate gas pipeline, and (3) transport the gas to a direct sales customer (purchasing for its own consumption) in the same State. Therefore, the pipeline, facility must be wholly located within a single State, connected to an interstate pipeline, and delivering gas to a direct sales customer (as we understand the term). The statute is silent as to the ownership of the various pipelines operator, the operator of the within-State pipeline, and the end user; or the point of sale, the ownership of the gas, or any other contract provisions. The lack of specificity in the statute indicates that the Secretary of Transportation has considerable latitude to define the jurisdictional boundaries. The logical point at which to draw the line between the interstate pipeline and the intrastate pipeline is the point where gas intended solely for the end user leaves the interstate transmission line. Normally, there will be a meter or valve at this point. The point sale, the ownership of the pipeline, and the relationship of the various entities are all irrelevant to this determination.

To illustrate this point, we use an actual example raised by a State. An ultimate consumer, a city electric department located in State A, plans to purchase gas from Company X located in State B. The gas would be transported from State B via an interstate pipeline operated by an interstate operator (Company Y). Company Y plans to build a 2.2 mile pipeline from an existing meter station on the interstate pipeline to terminate at a meter station to be constructed on a portion of the power plant owned by the city. The 2.2 mile pipeline would be located entirely within State A, the gas would be transported directly from an interstate transmission line, and the gas is intended for consumption by the city. Therefore, the 2.2 mile pipeline is an intrastate pipeline facility subject to the jurisdiction of State A.

NOTE: DIAGRAM

Mr. Mike Kane
Assistant Commissioner
Utility Program
Public Utility Commission of Oregon
Labor & Industries Building
Salem, Oregon, 97310-0335

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Dear Mr. Kane:

Thank you for the copy of your September 7, 1989, letter to Kevin Madden of FERC regarding the safety of customer-owned lines that are supplied high-pressure gas by taps on interstate transmission lines. The letter indicates we need to explain the application of the Part 192 regulations to these high-pressure customer-owned lines.

Part 192 applies to the transportation of gas by pipeline, which includes each of the recognized stages of gas pipeline transportation - gathering, transmission, and distribution. As the Part 192 definition of "service line " indicates, the jurisdiction of Part 192 over the distribution of gas ends at the customer meter or the connection to customer-owned piping, whichever point is farther downstream. In contrast, the regulations do not specify a point on a pipeline at which jurisdiction over the gathering or transmission of gas ends. Thus, the full length of pipelines used in the gathering or transmission of gas comes under the jurisdiction of Part 192, without limitation by customer meters or the beginning of customer-owned piping.

Under Part 192 the question of whether a pipeline is used on the transmission or distribution of gas is determined by the definitions of "transmission line" and "distribution line." Note that the distribution-line definition provides that a pipeline is not a distribution line if it qualities as a transmission line.

Applying these definitions to taps on interstate transmission lines, we find that the taps are classified as transmission lines when, in accordance with out longstanding interpretation of the definition of "transmission line," they are used to deliver a large volume of gas to a customer. Large volumes include delivery in the 400-800 psig range you mentioned. The high-pressure customer-owned lines located downstream from meters at these high-pressure taps are merely lateral extensions of transmission lines.

The jurisdiction of Part 192 over customer-owned gas transmission lines was made evident when we granted the International Paper Company a waiver from a Part 192 corrosion control rule for an interstate transmission line the company operates to supply its paper mill in Natchez, Mississippi. (50 FR 45186, October 30, 1985).

We recognize that because the regulations lack an express jurisdictional end point for the transmission of gas, confusion may arise regarding the bounds of Federal or State authority over customer-owned transmission lines. In this regard, a rulemaking proceeding has been scheduled to propose that our large-volume-customer interpretation be codified in the Part 192 definition of transmission line. We will include in that proceeding a proposal to adopt a suitable end point for the jurisdiction of Part 192 over customer-owned transmission lines.

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Your letter does not say whether the Oregon Public Utility Commission has jurisdiction over the customer-owned high pressure lines in question. We prefer that enforcement of Part 192 against operators of such intrastate lines handled directly by State agencies.

Sincerely,

George W. Tenley, Jr.
Director
Office of Pipeline Safety

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